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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/646,983	08/21/2003	Clifford Hannel	I004-P03079US	1148
33356 7590 03/18/2010 SoCAL IP LAW GROUP LLP 310 N. WESTLAKE BLVD. STE 120 WESTLAKE VILLAGE, CA 91362				
EXAMINER				
BENOIT, ESTHER				
ART UNIT		PAPER NUMBER		
2442				
MAIL DATE		DELIVERY MODE		
03/18/2010		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/646,983

Applicant(s)

HANNEL ET AL.

Examiner

ESTHER BENOIT

Art Unit

2442

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 1/28/2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/CD)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Action is in response to an Amendment filed on January 28, 2010. Claims 1-45 are pending in this application.

Response to Arguments

2. Applicant's arguments, filed 1/28/2010, have been fully considered but they are not persuasive. The applicants are arguing in substance the following:

Arguments under 35 U.S.C. 102 (e)

Arguments to Claim 1:

a) The prior art Gerrevink does not disclose "setting up foe engaging in transactions with the system under test" and "engaging in transactions with the system under test concurrently with the step of simulating the realistic mix of network traffic on the communications network, wherein the transactions result in additional network traffic on the communications network".

Response to arguments of Claim 1:

As to point a: The argument has been considered but is not persuasive. In paragraph [0037], the traffic stream generator generates and releases packets to the equipment under test. Gerrevink discloses sending data packets to the equipment under test during a traffic stream. Although Gerrevink does not use the term "transaction", these data packets are being transferred between the traffic stream generator and a router (equipment under test) to simulate live Internet traffic.

As to any claims not specifically discussed, the applicants argued that it was patentable for one of the reasons discussed above. Please see response to above arguments for unspecified discussions.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-45 are rejected under 35 U.S.C. 102(e) as being anticipated by Gerrevink et al. (US 2003/0012141 A1).

With respect to claim 1, Gerrevink discloses:

- coupling a device to the communications network, the device comprising a chassis and one or more adapter cards, the adapter cards comprising hardware and software ([0031] and [0035], *traffic stream generator*)
- the device setting up for simulation of a realistic mix of network traffic on the communications network ([0031] and [0035], *simulating a traffic mix*)

- the device simulating the realistic mix of network traffic on the communications network ([0031] and [0035], *simulating a traffic mix*)
- the device setting up for engaging in transactions with the system under test ([0037] and [0067], *different traffic classes*)
- the device engaging in transactions with the system under test concurrently with the step of simulating the realistic mix of network traffic on the communications network, wherein the transactions result in additional network traffic on the communications network ([0037] and [0067], *simulating realistic network traffic and generating different traffic classes*)
- the device measuring performance of the system under test under load of the transactions, and the network traffic on the communications network including the simulated network traffic from the device ([0037], [0067], and [0075], *making real-time measurements*)

With respect to independent claims 15, 21, and 27, the limitations of these claims are similar to the limitations of claim 1. Therefore, claims 15, 21, and 27 are rejected for the same reasons as claim 1 above. Please see rejection above.

With respect to claim 2, Gerrevink discloses the system under test comprises an application, the application operative on a server, the application for providing user-level interaction with plural client computers on the communications network the

providing step comprises providing the server and the application operative thereon ([0031] and [0035])

With respect to claim 3, Gerrevink discloses the system under test comprises a server load balancer ([0077])

With respect to claim 4, Gerrevink discloses the system under test comprises a stateful network communications device (Figure 1)

With respect to claim 5, Gerrevink discloses the performance of the system under test is characterized by how the server supports the simulated network traffic ([0031] and [0035])

With respect to claims 6 and 28, Gerrevink discloses the simulated network traffic is generated by a stateless packet processor (Figure 1)

With respect to claims 7, 29, and 38, Gerrevink discloses the system under test comprises a stateful application which uses underlying services of TCP ([0031])

With respect to claims 8, 30, and 39, Gerrevink discloses the system under test comprises an HTTP server ([0078])

With respect to claims 9, 31, and 40, Gerrevink discloses the system under test comprises an FTP server ([0078])

With respect to claims 10, 23, and 41, Gerrevink discloses modifying a behavior of the network traffic simulated by the device continuing to engage in

transactions with the system under test continuing to measure performance of the system under test ([0037], [0067], and [0075])

With respect to claims 11, 18, 24, 32, and 42, Gerrevink discloses using performance metrics to modify the behavior of the simulated network traffic to more closely simulate a realistic mix of network traffic ([0031])

With respect to claims 12, 19, 25, 33, and 43, Gerrevink discloses the performance metrics are selected from the group consisting of retransmission rate, fragmentation, packet sizes, and drop/reset rates ([0018])

With respect to claims 13, 34, and 44, Gerrevink discloses a user using a control program to change the behavior of the simulated network traffic via a system interface ([0031], [0067], and [0075])

With respect to claims 14 and 45, Gerrevink discloses the user managing multiple ports in a coordinated fashion ([0031], [0067], and [0075])

With respect to claims 16 and 22, Gerrevink discloses the adapter cards include a stateless packet processor for simulating the realistic mix of network traffic on the communications network (Figure 1)

With respect to claim 17, Gerrevink discloses hardware and software for modifying a behavior of the simulated network traffic (Figure 3, **350**)

With respect to claims 20 and 26, Gerrevink discloses hardware and software for changing a behavior of the simulated network traffic in response to user instructions (Figure 3, **350**)

With respect to claim 35, Gerrevink discloses simulating real-world network traffic on the communications network generating interactive transactions across the communications network with the system under test measuring performance of the system under test in supporting the interactive transactions from the second means despite the simulated traffic on the communication network from the first means changing quantity and quality of the network traffic simulated by the first means wherein the steps of simulating, generating and measuring are performed concurrently ([0037], [0067], and [0075], *simulating realistic network traffic and generating different traffic classes to make real-time measurements*)

With respect to claim 36, Gerrevink discloses the performance of the system under test is characterized by how the simulated network traffic is supported ([0031])

With respect to claim 37, Gerrevink discloses the simulated network traffic is generated by a stateless packet processor (Figure 1)

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on 571-272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B.
March 10, 2010

/Shawki S Ismail/
Primary Examiner, Art Unit 2455